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DEPARTMENT OF COMMERCE

International Trade Administration

A-533-840

Certain Frozen Warmwater Shrimp from India: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary No Shipment Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Department) is conducting the sixth administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India. The respondents which the Department selected for individual examination are Apex Exports (Apex) and Falcon Marine Exports Limited (Falcon). The respondents which were not selected for individual examination are listed in the “Preliminary Results of the Review” section of this notice. The period of review (POR) is February 1, 2010, through January 31, 2011.

We preliminarily determine that Falcon has not made sales at below normal value (NV), while Apex has made sales at below NV, and, therefore, these sales are subject to antidumping duties. In addition, based on the preliminary results for the respondents selected for individual examination, we have preliminarily determined a margin for those companies that were not individually examined.

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Henry Almond or Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0049, or (202) 482-3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the Federal Register an antidumping duty order on certain frozen warmwater shrimp from India.¹ On February 1, 2011, the Department published in the Federal Register a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from India for the period February 1, 2010, through January 31, 2011.² In response to timely requests from interested parties pursuant to 19 CFR 351.213(b)(1) and (2) to conduct an administrative review of the U.S. sales of shrimp by numerous Indian producers/exporters, the Department published a notice of initiation of administrative review for 185 companies.³

In the Initiation Notice, the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), we would select mandatory respondents for individual examination based upon CBP entry data. See Initiation Notice, 76 FR at 18157. In April 2011,

¹ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147 (Feb. 1, 2005) (Shrimp Order).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 76 FR 5559 (Feb. 1, 2011).

³ See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Antidumping Duty Administrative Reviews, 76 FR 18157 (Apr. 1, 2011) (Initiation Notice).

we received comments on the issue of respondent selection from the petitioner,⁴ the American Shrimp Processors Association (ASPA), and Apex.

In April and May 2011, we received statements from 13 companies that indicated that they had no shipments of subject merchandise to the United States during the POR. Also in May 2011, after considering the large number of potential exporters or producers involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.⁵ As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters accounting for the largest volume of shrimp from India during the POR (i.e., Apex and Falcon). Accordingly, we issued the antidumping duty questionnaire to these companies.

In June and July 2011, we received responses from Apex and Falcon to section A (i.e., the section related to general information), and sections B and C (i.e., the sections covering comparison market and U.S. sales, respectively) of the questionnaire.

In August 2011, we selected Japan as the appropriate third country comparison market for Falcon.⁶ Also in this month, we received the response to section D (i.e., the section covering cost of production (COP) and constructed value (CV) of the questionnaire) of the questionnaire

⁴ The petitioner is the Ad Hoc Shrimp Trade Action Committee.

⁵ See Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from Henry Almond, Senior Analyst, Office 2, AD/CVD Operations entitled, "2010-2011 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India: Selection of Respondents for Individual Review," dated May 24, 2011 (Respondent Selection Memo).

⁶ See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "2010-2011 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from India - Selection of the Appropriate Third Country Market for Falcon Marine Exports Limited," dated August 9, 2011 (Falcon Third Country Market Memo).

from Falcon, as well as requests from the petitioner and the ASPA that the Department initiate a sales-below-cost investigation related to Apex's sales to the United Kingdom.⁷

In September 2011, we initiated a sales-below-cost investigation for Apex.⁸ On this same date, we required Apex to respond to section D of the questionnaire. Apex submitted its response in October 2011.

On October 5, 2011, the Department extended the preliminary results in the current review to no later than February 28, 2012.⁹ From October 2011 through January 2012, we issued supplemental sales and cost questionnaires to Apex and Falcon. Apex and Falcon responded to these questionnaires from November 2011 through February 2012.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹⁰ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are

⁷ The United Kingdom was Apex's only viable third country market.

⁸ See the memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from the Team entitled, "The Ad Hoc Shrimp Trade Action Committee's and the American Shrimp Processors Association's Allegations of Sales Below the Cost of Production for Apex Exports," dated September 12, 2011 (Sales-Below-Cost-Memo for Apex).

⁹ See Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the 2010-2011 Administrative Reviews, 76 FR 61668 (Oct. 5, 2011).

¹⁰ "Tails" in this context means the tail fan, which includes the telson and the uropods.

products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Thai white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); and 7) certain battered shrimp. Battered shrimp is a shrimp-based product: 1) that is produced from

fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Preliminary Determination of No Shipments

As noted in the “Background” section above, in April and May 2011, 13 companies notified the Department that they had no shipments of subject merchandise to the United States during the POR. The Department subsequently confirmed with CBP the no-shipment claim made by nine of these companies. Because the evidence on the record indicates that these companies did not export subject merchandise to the United States during the POR, we preliminarily determine that the following nine companies had no reviewable transactions during the POR:

- 1) Accelerated Freeze Drying Company Ltd.¹¹
- 2) Amulya Seafoods
- 3) Baby Marine International
- 4) Baby Marine Sarass
- 5) BMR Exports
- 6) Castlerock Fisheries Ltd.
- 7) Esmario Export Enterprises
- 8) Koluthara Exports Ltd.
- 9) Penver Products (P) Ltd.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR.¹² As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, “automatic assessment” clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.¹³

Because “as entered” liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by the nine companies listed above, and exported by other parties, at the all-others rate, should we continue to find that these companies

¹¹ This company was listed in the Initiation Notice as “Accelerated Freeze-Drying C.”

¹² See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27393 (May 19, 1997).

¹³ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice).

had no shipments of subject merchandise during the POR in our final results.¹⁴ In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to these nine companies and issue appropriate instructions to CBP based on the final results of the review. See the “Assessment Rates” section of this notice, below.

With respect to the remaining four companies (i.e., Kay Kay Exports, Sharat Industries Limited, Uniroyal Marine Exports Ltd., and Veejay Impex) which certified that they had no shipments during the POR, we have requested entry documentation from CBP to clarify the no-shipment certifications. Because this information was not received in time for use in the preliminary results, we are unable to preliminarily conclude that Kay Kay Exports, Sharat Industries Limited, Uniroyal Marine Exports, and Veejay Impex had no reviewable transactions in this administrative review. Therefore we have assigned each of these companies a preliminary dumping rate based on the margin calculated for Apex (because it is the only mandatory respondent for which we calculated an above de minimis margin). However, we plan to consider the CBP entry documentation in the final results.

Comparisons to Normal Value

To determine whether sales of shrimp from India to the United States were made at less than NV, we compared the export price (EP) to the NV, as described in the “Export Price” and “Normal Value” sections of this notice.

¹⁴ See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 26922 (May 13, 2010), unchanged in Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989 (Sept. 17, 2010); and Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results of Antidumping Duty Administrative Review, 75 FR 76700, 76701 (Dec. 9, 2010).

Pursuant to sections 773(a)(1)(B)(ii) and 777A(d)(2) of the Act, for Apex and Falcon, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as discussed in the “Cost of Production Analysis” section below.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced by Apex and Falcon covered by the description in the “Scope of the Order” section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of shrimp to sales of shrimp made in the selected third country market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Apex and Falcon in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative. Where there were no sales of identical or similar merchandise, we made product comparisons using constructed value (CV), as discussed in the “Calculation of Normal Value Based on Constructed Value” section, below. See section 773(a)(4) of the Act.

Export Price

For all U.S. sales made by Apex and Falcon, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted based on the facts of record.

A. Apex

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses, foreign brokerage and handling expenses, foreign miscellaneous shipment charges, international freight expenses, terminal handling charges, marine insurance expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. brokerage and handling expenses, and U.S. inland freight expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

B. Falcon

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for cold storage expenses, loading and unloading expenses, trailer hire expenses, foreign inland freight expenses, port charges, export survey charges, terminal handling charges, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. brokerage and handling expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for each of the respondents was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Regarding Apex, we selected the United Kingdom as the comparison market because it was Apex's only viable third country market. For Falcon, we selected Japan as the comparison market because, among other things, Falcon's sales of foreign like product in Japan were the most similar to the subject merchandise. For further discussion, see the Falcon Third Country Market Memo. Therefore, as the basis for comparison market sales, we used sales to the United Kingdom and Japan, respectively, for Apex and Falcon, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹⁵ In

¹⁵ Id; see also Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999, 51001 (Aug. 18, 2010),

order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (i.e., NV based on either home market or third country prices),¹⁶ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.¹⁷

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment is possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See, e.g., OJ from Brazil, 75 FR at 51001.

In this administrative review, we obtained information from both respondents regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a

and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

¹⁶ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

¹⁷ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Apex

Apex reported that it made EP sales in the U.S. market through a single channel of distribution (i.e., to trading companies). We examined the selling activities performed for U.S. sales and found that Apex performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India and the United States); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. These selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on the selling function categories, we find that Apex performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel (i.e., direct sales to unaffiliated customers) and the selling activities to Apex's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Apex also reported that it made sales to trading companies and that all selling functions were performed at the same levels of intensity as in the U.S. market. We examined the selling activities performed for third country sales and found that Apex performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India); cold storage and inventory maintenance; quality-assurance-related activities; and

banking-related activities. Accordingly, based on these selling functions noted above, we find that Apex performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Apex's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Apex.

Finally, we compared the U.S. LOT to the third country market LOT and found that the selling functions performed for U.S. and third country market customers do not differ, as Apex performed the same selling functions at the same relative level of intensity in both markets. Therefore, we determine that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

2. Falcon

Falcon reported that it made EP sales in the U.S. market to trading companies. We examined the selling activities performed for U.S. sales and found that Falcon performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India and the United States); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. These selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, based on the selling function categories, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel (i.e., direct sales to

unaffiliated customers) and the selling activities to Falcon's customers did not vary within this channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the third country market, Falcon reported that it made sales to trading companies and that all selling functions were performed at the same levels of intensity as in the U.S. market. We examined the selling activities performed for third country sales and found that Falcon performed the following selling functions: customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services (in India); cold storage and inventory maintenance; quality-assurance-related activities; and banking-related activities. Accordingly, based on these selling functions noted above, we find that Falcon performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for all third country sales. Because all third country sales are made through a single distribution channel and the selling activities to Falcon's customers did not vary within this channel, we preliminarily determine that there is one LOT in the third country market for Falcon.

Finally, we compared the EP LOT to the third country market LOT and found that the selling functions performed for U.S. and third country market customers do not differ, as Falcon performed the same selling functions at the same relative level of intensity in both markets. Therefore, we determine that sales to the U.S. and third country markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

C. Cost of Production Analysis

On August 12, 2011, the petitioner and the ASPA alleged that Apex made sales to the United Kingdom that were below the COP. Based on our analysis of the petitioner's allegation, we found that there were reasonable grounds to believe or suspect that Apex's sales of shrimp in

the United Kingdom were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether Apex's sales were made at prices below its COP. See Sales-Below-Cost-Memo for Apex.

In addition, we found that Falcon made sales in the same comparison market (i.e., Japan) below the COP in the most recently completed segment of this proceeding as of the date of initiation of this review, and such sales were disregarded.¹⁸ Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, we preliminarily find that there are reasonable grounds to believe or suspect that Falcon made sales in the third country market at prices below the cost of producing the merchandise during the current POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of third country selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except that we revised the financial expenses reported by each respondent to exclude claimed interest income received on antidumping duty deposit refunds.¹⁹

¹⁸ See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination, 75 FR 41815 (July 19, 2010).

¹⁹ See the memorandum from Stephanie Arthur, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Apex Exports," and the memorandum from Robert Greger, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Falcon Marine Exports Ltd.," dated February 28, 2012.

Based on our review of the record evidence, neither Apex nor Falcon appeared to experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the comparison market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard third country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's third country sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and 2) based on our comparison of prices to the weighted-

average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Apex and Falcon's third country sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no comparable third country sales in the ordinary course of trade, we compared EP to CV in accordance with section 773(a)(4) of the Act. See "Calculation of Normal Value Based on Constructed Value" section below.

D. Calculation of Normal Value Based on Comparison Market Prices

1. Apex

For Apex, we calculated NV based on delivered prices to unaffiliated customers in the United Kingdom. We made adjustments to the starting price, where appropriate, for discounts, in accordance with 19 CFR 351.401(c). We also made deductions for foreign inland freight expenses, foreign brokerage and handling expenses, various foreign miscellaneous shipment charges and international freight expenses (including terminal handling charges), under section 773(a)(6)(B) of the Act.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including bank charges, Export Credit Guarantee Corporation (ECGC) fees, export inspection agency (EIA) fees, imputed credit expenses, and other direct selling expenses), and commissions. Because

commissions were paid only in the comparison market, we made an upward adjustment to NV for the lesser of: 1) the amount of commission paid in the comparison market; or 2) the amount of indirect selling expenses (including inventory carrying costs) incurred in the U.S. market. See 19 CFR 351.410(e).

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

2. Falcon

We based NV for Falcon on prices to unaffiliated customers in Japan. We made adjustments, where appropriate, to the starting price for discounts, in accordance with 19 CFR 351.401(c). We also made deductions, where appropriate, from the starting price for cold storage expenses, loading and unloading expenses, trailer hire expenses, foreign inland freight expenses, port charges, export survey charges, terminal and handling charges, foreign brokerage and handling expenses, and international freight expenses, under section 773(a)(6)(B)(ii) of the Act.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for direct selling expenses (including bank charges, ECGC fees, EIA fees, outside inspection/lab expenses, letter of credit amendment charges, imputed credit expenses, and other direct selling expenses) and commissions. Finally, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses (including inventory carrying costs)

incurred in the comparison market. See 19 CFR 351.410(e). If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology.

We recalculated Falcon's indirect selling expense ratio to exclude sales write-offs recorded in Falcon's financial statements after the POR, in accordance with our practice.²⁰

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those shrimp products for which we could not determine the NV based on comparison market sales because, as noted in the "Results of the COP Test" section above, all sales of the comparable products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the

²⁰ See the February 28, 2012, memorandum from David Crespo to the file entitled, "Calculation Adjustments for Falcon Marine Exports Limited for the Preliminary Results in the 2010-2011 Administrative Review of Certain Frozen Warmwater Shrimp from India."

foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance-of-sale adjustments by deducting direct selling expenses incurred on comparison market sales from, and adding U.S. direct selling expenses to, CV. See 19 CFR 351.410(c). We also made an adjustment for Falcon, when applicable, for comparison market indirect selling expenses, adjusted as noted above, to offset U.S. commissions in EP comparisons. See 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars for all transactions by Apex and all spot transactions by Falcon, in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. In addition, Falcon reported that it purchased forward exchange contracts which were used to convert its sales prices into home market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such currency in the forward sale agreement to convert the foreign currency.²¹ Therefore, for Falcon we used the reported forward exchange rates for currency conversions where applicable.

²¹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 6; see also Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Preliminary No Shipment Determination, 76 FR 12025, 12031 (Mar. 4, 2011), unchanged in Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission, and Final No Shipment Determination, 76 FR 41203 (July 13, 2011).

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2010, through January 31, 2011, as follows:

<u>Manufacturer/Exporter</u>	<u>Percent Margin</u>
Apex Exports	2.51
Falcon Marine Exports Limited	0.13 (<u>de minimis</u>)

Review-Specific Average Rate Applicable to the Following Companies:²²

<u>Manufacturer/Exporter</u>	<u>Percent Margin</u>
Abad Fisheries Pvt. Ltd.	2.51
Accelerated Freeze-Drying Co.	*
Adilakshmi Enterprises	2.51
Allana Frozen Foods Pvt. Ltd.	2.51
Allansons Ltd.	2.51
AMI Enterprises	2.51
Amulya Sea Foods	*
Ananda Aqua Applications / Ananda Aqua Exports (P) Limited / Ananda Foods	2.51
Anand Aqua Exports	2.51
Andaman Seafoods Pvt. Ltd.	2.51
Angelique Intl	2.51
Anjaneya Seafoods	2.51
Arvi Import & Export	2.51
Asvini Exports	2.51
Asvini Fisheries Private Limited	2.51
Avanti Feeds Limited	2.51
Ayshwarya Seafood Private Limited	2.51
Baby Marine Exports	2.51
Baby Marine International	*
Baby Marine Sarass	*
Bhatsons Aquatic Products	2.51
Bhavani Seafoods	2.51
Bijaya Marine Products	2.51
Blue Water Foods & Exports P. Ltd.	2.51
Bluefin Enterprises	2.51

²² This rate is based on the margin calculated for Apex because it is the only above de minimis margin calculated in this administrative review.

Bluepark Seafoods Pvt. Ltd.	2.51
BMR Exports	*
Britto Exports	2.51
C P Aquaculture (India) Ltd.	2.51
Calcutta Seafoods Pvt. Ltd.	2.51
Capithan Exporting Co.	2.51
Castlerock Fisheries Pvt. Ltd.	*
Chemmeens (Regd)	2.51
Cherukattu Industries (Marine Div.)	2.51
Choice Canning Company	2.51
Choice Trading Corporation Private Limited	2.51
Coastal Corporation Ltd.	2.51
Cochin Frozen Food Exports Pvt. Ltd.	2.51
Coreline Exports	2.51
Corlim Marine Exports Pvt. Ltd.	2.51
Damco India Private	2.51
Devi Fisheries Limited	2.51
Devi Marine Food Exports Private Ltd. /	2.51
Kader Exports Private Limited /	
Kader Investment and Trading Company Private Limited /	
Liberty Frozen Foods Pvt. Ltd. / Liberty Oil Mills Ltd. /	
Premier Marine Products /	
Universal Cold Storage Private Limited	
Diamond Seafoods Exports / Edhayam Frozen Foods Pvt. Ltd. /	2.51
Kadalkanny Frozen Foods / Theva & Company	
Digha Seafood Exports	2.51
Esmario Export Enterprises	*
Exporter Coreline Exports	2.51
Five Star Marine Exports Private Limited	2.51
Forstar Frozen Foods Pvt. Ltd.	2.51
Frontline Exports Pvt. Ltd.	2.51
G A Randerian Limited	2.51
Gadre Marine Exports	2.51
Galaxy Maritech Exports P. Ltd.	2.51
Gayatri Seafoods	2.51
Geo Aquatic Products (P) Ltd.	2.51
Geo Seafoods	2.51
Goodwill Enterprises	2.51
Grandtrust Overseas (P) Ltd.	2.51
GVR Exports Pvt. Ltd.	2.51
Haripriya Marine Export Pvt. Ltd.	2.51
Harmony Spices Pvt. Ltd.	2.51
HIC ABF Special Foods Pvt. Ltd.	2.51
Hindustan Lever, Ltd.	2.51
Hiravata Ice & Cold Storage	2.51

Hiravati Exports Pvt. Ltd.	2.51
Hiravati International Pvt. Ltd. (located at APM – Mafco Yard, Sector – 18, Vashi, Navi, Mumbai – 400 705, India)	2.51
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	2.51
IFB Agro Industries Ltd.	2.51
Indian Aquatic Products	2.51
Indo Aquatics	2.51
Innovative Foods Limited	2.51
International Freezefish Exports	2.51
Interseas	2.51
ITC Ltd.	2.51
ITC Limited, International Business	2.51
Jagadeesh Marine Exports	2.51
Jaya Satya Marine Exports	2.51
Jaya Satya Marine Exports Pvt. Ltd.	2.51
Jayalakshmi Sea Foods Private Limited	2.51
Jinny Marine Traders	2.51
Jiya Packagings	2.51
K R M Marine Exports Ltd.	2.51
Kalyanee Marine	2.51
Kanch Ghar	2.51
Kay Kay Exports	2.51
Kings Marine Products	2.51
Koluthara Exports Ltd.	*
Konark Aquatics & Exports Pvt. Ltd.	2.51
Landauer Ltd.	2.51
Libran Cold Storages (P) Ltd.	2.51
Magnum Estates Limited	2.51
Magnum Export	2.51
Magnum Sea Foods Limited	2.51
Malabar Arabian Fisheries	2.51
Malnad Exports Pvt. Ltd.	2.51
Mangala Marine Exim India Pvt. Ltd.	2.51
Mangala Sea Products	2.51
Meenaxi Fisheries Pvt. Ltd.	2.51
MSC Marine Exporters	2.51
MSRDR Exports	2.51
MTR Foods	2.51
N.C. John & Sons (P) Ltd	2.51
Naga Hanuman Fish Packers	2.51
Naik Frozen Foods	2.51
Naik Frozen Foods Pvt., Ltd.	2.51
Naik Seafoods Ltd.	2.51

Navayuga Exports Ltd.	2.51
Nekkanti Sea Foods Limited	2.51
NGR Aqua International	2.51
Nila Sea Foods Pvt. Ltd.	2.51
Nine Up Frozen Foods	2.51
Overseas Marine Export	2.51
Paragon Sea Foods Pvt. Ltd.	2.51
Penver Products (P) Ltd.	*
Pijikay International Exports P Ltd.	2.51
Pisces Seafood International	2.51
Premier Exports International	2.51
Premier Marine Foods	2.51
Premier Seafoods Exim (P) Ltd.	2.51
R V R Marine Products Private Limited	2.51
Raa Systems Pvt. Ltd.	2.51
Raju Exports	2.51
Ram's Assorted Cold Storage Ltd.	2.51
Raunaq Ice & Cold Storage	2.51
Raysons Aquatics Pvt. Ltd.	2.51
Razban Seafoods Ltd.	2.51
RBT Exports	2.51
RDR Exports	2.51
Riviera Exports Pvt. Ltd.	2.51
Rohi Marine Private Ltd.	2.51
S & S Seafoods	2.51
S. A. Exports	2.51
S Chanchala Combines	2.51
Safa Enterprises	2.51
Sagar Foods	2.51
Sagar Grandhi Exports Pvt. Ltd.	2.51
Sagar Samrat Seafoods	2.51
Sagarvihar Fisheries Pvt. Ltd.	2.51
SAI Marine Exports Pvt. Ltd.	2.51
SAI Sea Foods	2.51
Sandhya Aqua Exports	2.51
Sandhya Aqua Exports Pvt. Ltd.	2.51
Sandhya Marines Limited	2.51
Santhi Fisheries & Exports Ltd.	2.51
Satya Seafoods Private Limited	2.51
Sawant Food Products	2.51
Seagold Overseas Pvt. Ltd.	2.51
Selvam Exports Private Limited	2.51
Sharat Industries Ltd.	2.51
Shimpo Exports	2.51
Shippers Exports	2.51

Shroff Processed Food & Cold Storage P Ltd.	2.51
Silver Seafood	2.51
Sita Marine Exports	2.51
Sowmya Agri Marine Exports	2.51
Sprint Exports Pvt. Ltd.	2.51
Sri Chandrakantha Marine Exports	2.51
Sri Sakthi Cold Storage	2.51
Sri Sakthi Marine Products P Ltd.	2.51
Sri Satya Marine Exports	2.51
Sri Venkata Padmavathi Marine Foods Pvt. Ltd.	2.51
Srikanth International	2.51
SSF Ltd.	2.51
Star Agro Marine Exports Private Limited	2.51
Sun Bio-Technology Ltd.	2.51
Suryamitra Exim (P) Ltd.	2.51
Suvarna Rekha Exports Private Limited	2.51
Suvarna Rekha Marines P Ltd.	2.51
TBR Exports Pvt Ltd.	2.51
Teekay Marine P. Ltd.	2.51
Tejaswani Enterprises	2.51
The Waterbase Ltd.	2.51
Triveni Fisheries P Ltd.	2.51
Uniroyal Marine Exports Ltd.	2.51
Usha Seafoods	2.51
V.S Exim Pvt Ltd.	2.51
Veejay Impex	2.51
Victoria Marine & Agro Exports Ltd.	2.51
Vinner Marine	2.51
Vishal Exports	2.51
Wellcome Fisheries Limited	2.51
West Coast Frozen Foods Private Limited	2.51

*\ No shipments or sales subject to this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than the later of 30 days after the date of publication of this notice or one week after the issuance of the final verification report for Falcon. Rebuttal briefs, limited to issues raised in the case

briefs, may be filed not later than five days after the date for filing case briefs. See 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. See 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Apex and Falcon, we will calculate importer-specific ad valorem duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. See 19 CFR 351.212(b)(1).

For the companies which were not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review excluding any which are de minimis or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above de minimis. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. See section 751(a)(2)(C) of the Act.

The Department clarified its “automatic assessment” regulation on May 6, 2003. See Assessment Policy Notice. This clarification will apply to entries of subject merchandise during the POR produced by companies included in the final results of this review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. See Assessment Policy Notice for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation. See Shrimp Order, 70 FR at 5148. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

__February 28, 2012_____
(Date)

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